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Order 99-9-18



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

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Issued by the Department of Transportation
on the 28th day of September, 1999

Applications of

THE COMMUNITY OF SAVANNAH, GA/HILTON
HEAD, SC

THE COMMUNITY OF GREENVILLE/SPARTANBURG,
SC

For exemptions from 14 CFR Part 93,
Subparts K and S, pursuant to 49 U.S.C.
§ 41714

Dockets OST-98-3603 - 45

OST-99-5130 - 8

ORDER

SUMMARY

By this order the Department is extending until further notice the effectiveness of the slot exemptions that were temporarily authorized in Order 99-3-12.

BACKGROUND

By Order 99-3-12 the Department inter *alia* reserved three Chicago O'Hare slot exemptions each for the communities of Savannah, Georgia/Hilton Head, South Carolina and **Greenville/Spartanburg**, South Carolina for the purpose of assisting those communities in acquiring nonstop air service to O'Hare Airport. We termed our action to be an experimental allocation and we limited its effectiveness to a 179-day period during which we would evaluate the resulting service. We noted that "[t]he limited period of effectiveness is appropriate due to the unique character of this experiment, as well as a desire not to unduly limit carriers' discretion over their markets and operations. Moreover, we expect that Congress will be addressing slot exemption issues this term, and we desire to maintain program flexibility in light of any legislative developments in that area." (Order 99-3-12 at 4)

As a result of our action each community has gained nonstop O'Hare air service and, in anticipation of the expiration of the provisions of Order 99-3-12, each has filed an

application and supporting information requesting permanent assignment of the temporary slot exemptions allocated by the order.

Savannah/Hilton Head

On April 22, or 18 days after the effectiveness of Order 99-3-12, Savannah/Hilton Head requested two additional slot exemptions to enable an additional daily roundtrip to O'Hare, asserting that initial traffic response had already demonstrated that the service is successful. In subsequent filings on June 21 and June 23, Savannah/Hilton Head reported that after approximately **40** days of service, load factors were exceeding 70%.

On June 30 Atlantic Coast Airlines (ACA) filed an answer in support of the Savannah/Hilton Head application. ACA concurs in Savannah/Hilton Head's characterization of its O'Hare service as highly successful, and commented that the two roundtrip pattern enabled by the terms of Order 99-3-12 was "suboptimal." ACA noted that it had experienced average market load factors of approximately 75 percent during the June 1-June 21 period. On July 7 Savannah/Hilton Head filed a motion for leave to file and response that reiterated its desire for additional O'Hare slot exemptions.

Greenville/Spartanburg

On August 6, the Greenville-Spartanburg Airport Commission filed an application for renewal of the slot exemptions awarded in Order 99-3-12. Greenville-Spartanburg notes that on July 1, 1999, American Eagle inaugurated Greenville-Spartanburg-O'Hare service with three daily round trips and asserts that this service has been successful.

On August 23, United Air Lines filed an answer opposing the Greenville-Spartanburg application. United argues that the Department's grant of slot exemptions to communities is unsound on legal and policy grounds. As it has previously argued, United contends that the Department has no legal authority under 49 U.S.C. **§41714** to grant slot exemptions to communities, and that such action violates the federal preemption provisions of 49 U.S.C. 941713(b). United asserts that the Department, rather than individual communities, should select individual carriers for slot exemption service since the Department has a broader perspective and mandate to effectively utilize slot exemptions to develop small community air service.

DECISION

We have decided to extend the provisions of Order 99-3-12 until further notice. As we noted in authorizing this experiment, we want to maintain program flexibility regarding slot issues while Congress is addressing relevant legislative proposals. At this time, legislative proposals remain pending and it would therefore be premature to take permanent action on the experiment. Moreover, initial indications are that traffic

response at both Savannah/Hilton Head and **Greenville/Spartanburg** has been very good. Thus, clearly it would not be in the public interest to terminate the authorization of the slot exemptions.

We disagree with United's arguments concerning our legal authority to award slot exemptions to communities, as we explained in detail in Order 99-3-12. As we noted there, only 49 U.S.C. **§41714(a)**, which does not apply to this case, limits the award of slot exemptions to air carriers.

We are not in a position to grant Savannah/Hilton Head's request for additional exemptions. We are continuing to adhere to the previously established limit of 60 slot exemptions at O'Hare based on an environmental assessment issued with Order 97-10-16. There are no available exemptions **remaining** against that limit. Moreover, in view of the strong and valid interest of numerous communities to gain access to O'Hare, our policy has been to encourage air carrier recipients of slot exemptions, especially those with ties to American Airlines or United Air Lines, to augment their slot exemptions through the market place or by operating outside the controlled hours.

FUTURE CHANGES

As the FAA slot regulation makes clear "slot(s) do not represent a property right but represent an operating privilege subject to absolute FAA control (and) slots may be withdrawn at any time to **fulfill** the Department's operating needs.. ."

14 CFR 93.223(a). This order should not be construed as conferring any ability to sell, trade, transfer, or convey the operating authorities granted by the subject exemptions.

This Order is issued under authority delegated in 49 CFR 1.56(a).

ACCORDINGLY,

1. The Department deletes ordering paragraph 7 of Order 99-3-12;
2. We grant all motions to file otherwise unauthorized documents; and
3. We will serve this order on all parties in Dockets OST-98-3603, and **99-5130**.

By:

A. BRADLEY MIMS

Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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